Office-Supreme Court, U.S.
FILED
APR 12 1962
JOHN F. DAVIS, CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1961

No. 831

CAMDEN TRUST COMPANY,
Petitioner

v.

RAY M. GIDNEY, Comptroller of the Currency
and
Delaware Valley National Bank of
Delaware Township

On Petition For a Writ of Certiorari To The United States Court of Appeals For The District of Columbia Circuit

BRIEF OF AMICUS CURIAE, THE NATIONAL ASSOCIATION OF SUPERVISORS OF STATE BANKS, IN SUPPORT OF PETITION

JAMES F. BELL
1001 Connecticut Avenue, N.W.
Washington 6, D. C.
Attorney for Amicus Curiae

Of Counsel:
POGUE & NEAL
1001 Connecticut Avenue, N.W.
Washington 6, D. C.

WILSON - EPES PRINTING CO. - RE 7-6002 - WASHINGTON 1, D. C.

INDEX

	PAGE
Interest of Amicus Curiae	1
Reasons For Granting The Writ	3
1. This is a case of first impression involving an important question of Federal law affecting the dual banking system	3
2. The decision below is clearly erroneous	7
Conclusion	10
Appendix A	11

CITATIONS

CASES:

Chicago, M. & St. R. Co. v. *Minneapolis C. & C. Assoc.*, 247 U.S. 490 (1918)	9
Clark v. *Vehersee Finanz-Korp*, 332 U.S. 480 (1947)	8
Commercial State Bank of Roseville v. *Gidney*, 174 F. Supp. 770 (D.C. D.C. 1959), aff'd. 108 App. D.C. 37, 278 F. 2d 871 (D.C. Cir. 1960)	4
Daniel v. *Best*, 224 Iowa 1348, 279 N.W. 374 (Sup. Ct. Iowa, 1938)	9
Federal Power Commission v. *Panhandle E.P.L. Co.*, 337 U.S. 498 (1949)	8
First National Bank v. *Mo.*, 263 U.S. 640 (1924)	3
National Bank of Detroit v. *Wayne Oakland Bank*, 252 F. 2d 537 (6th Cir. 1958), cert. denied 358 U.S. 830 (1958)	4
Schenley Distillers Corp. v. *United States*, 326 U.S. 432 (1946)	9
Western P. R. Corp. v. *Western P. R. Co.*, 345 U.S. 247 (1953)	7

PAGE

STATUTES:

Act of February 25, 1927, C. 191, § 7, 44 Stat. 1228, 12 U.S.C. 36(c) 2, 4, 7, 8
Act of June 16, 1933, C. 89, § 23, 48 Stat. 189, 190, 12 U.S.C. 36(c) 4, 5
Banking Act of 1948 of the State of New Jersey (N.J.S.A. 17:9A-19) 6
Federal Reserve Act of 1913, 44 Stat. 1229, 12 U.S.C. 321 4
Federal Reserve Act of 1913, 48 Stat. 164, 12 U.S.C. 321 5
Mississippi Code 1942 Anno., Vol. 4A, § 5235 8
National Bank Act of 1864, Rev. Stat. para. 5133 et seq., 12 U.S.C. 21 et seq. 2
Revised Statutes § 5169, 12 U.S.C. 27 ..... 7, 8

MISCELLANEOUS:

Annual Reports of the Comptroller—1922-1924 3
65 Cong. Rec. 11298 (1924) 5
75 Cong. Rec. 9890, 13,002 (1932) 5
76 Cong. Rec. 1449, 1997, 2079, 2080, 2090, 2205, 2206, 2208, 2517 (1932) 5
1 Fletcher, Cyclopedia Corporation (Per. Ed.) § 45 9
Hearings on H.R 2674, 84th Cong., 1st Sess. (1955) 9
H. Rep. No. 254, 73rd Cong., 1st Sess. (1933) 5
S. Rep. No. 584, 72nd Cong., 1st Sess. on S. 4412 (1932) 5
S. Rep. No. 77, 73rd Cong., 1st Sess. on S. 1631 (1933) 5

In The

Supreme Court of the United States

October Term, 1961

No. 831

Camden Trust Company,
Petitioner

v.

Ray M. Gidney, Comptroller of the Currency

and

Delaware Valley National Bank of
Delaware Township

On Petition For a Writ of Certiorari To The United States Court of Appeals For The District of Columbia Circuit

---

BRIEF OF AMICUS CURIAE, THE NATIONAL ASSOCIATION OF SUPERVISORS OF STATE BANKS, IN SUPPORT OF PETITION

This brief is filed pursuant to Rule 42 of this Court with the consent of all parties.

INTEREST OF AMICUS CURIAE

The National Association of Supervisors of State Banks (hereinafter called the "Supervisors") was founded in

1902 and has 52 members. It is composed of the officials of State governments responsible for the supervision of State-chartered banking institutions in every State in the Union, and of such officials in the Commonwealth of Puerto Rico and in the Virgin Islands. The 9,446 State banks under their supervision, together with the 4,513 National banks chartered under the National Bank Act of 1864, Rev. Stat. para. 5133 *et seq.* 12 U.S.C. 21 *et seq.*, subject to the supervision of the Comptroller of the Currency, comprise the "dual banking system."

The Supervisors have a keen interest in this case. As indicated by Appendix A to this brief, eighteen States do not authorize the establishment of branches by State banks, while fifteen others permit branches on a limited basis, usually only in municipalities where no banking facility already exists. State banks in these thirty three States could not long survive in competition with National banks, if such National Banks held more liberal branching authority than such State banks, just as National banks could not survive in States where State banks held more liberal branching authority. Congress has recognized this fact and in the National Bank Act, 44 Stat. 1228, 12 U.S.C. 36(c), established State law as the standard by which branches of National banks may be established. Accordingly, both State and National banks in each State operate today under the same standard for the establishment of branches, that of the branch laws of the respective States.

The decision below sustains an approval by the Comptroller of an application by the directors of an existing National bank to form a new bank in a State under circumstances where, under State law, such an application by the directors of a similarly situated State bank would be rejected as a forbidden branch. This decision is a matter of deep concern to the Supervisors for it appears to countenance a manifest evasion of the competitive equality

between State and National banks in the matter of branching which Congress sought to establish in the National Bank Act, and upon which depends the continued vitality of the State Banking System.

REASONS FOR GRANTING THE WRIT

1. This is a case of first impression involving an important question of Federal law affecting the dual banking system.

Congressional policy on branching. One of the most controversial questions to arise in the banking industry has been that of the establishment of branch banks. Between 1864 and 1927 the National Bank Act did not provide for the establishment of branches by National banks, a restriction which was rigidly enforced. *First National Bank* v. *Mo.*, 263 U.S. 640 (1924). There was mounting pressure for the authority to establish such branches, however, both by advocates of branch banking and by the Comptroller of the Currency who felt that the very existence of the National banking system was threatened by the competitive advantage held by State banks authorized by State law to establish branches.[1]

---

[1] E.g., the 1922 Annual Report of the Comptroller of the Currency stated at p. 4: ". . . we are in grave danger of losing our larger national banks in states where more liberal charters are granted to state banks unless we extend to national banks the privilege and facilities in carrying on their business that are accorded to state banks." The 1923 Report (pp. 4-17) contained an exhaustive coverage of this matter and flatly stated at p. 6: "If, however, state member banks engage in unlimited branch banking, it will mean the eventual destruction of the national banking system . . . ." The 1924 Report (pp. 3-6) said at p. 4: "The question as to whether national banks may be granted the opportunity to meet the competition of state banks in intracity banking in my opinion involves the question of the perpetuation of the national banking system."

National banks are, of course, instrumentalities of the Federal Government and are subject to the paramount authority of the United States. Congress has the power to authorize National banks to establish branch banks regardless of State law. However, it has *not* done so. It ". . . adopted state law as a measuring stick for the establishment of branches by National banks." 12 U.S.C. 36(c)." *Commercial State Bank of Roseville* v. *Gidney*, 174 F. Supp. 770, 774 (D.C. D.C. 1959) aff'd. *per curiam* 278, F.2d 871 (D.C. Cir. 1960). Or, as stated by the Court of Appeals for the Sixth Circuit:

> "The history of federal legislation regarding branch banking and the statutes applying thereto leave a clear and definite impression that Congress intended, with respect to the location of branches, that a national bank should have no greater rights than it would if it were a state bank, and that a national bank was to be permitted to establish and operate a branch in a State only at such a point as it could, by express provisions of a State statute, establish and operate a branch if it were then a state bank." *National Bank of Detroit* v. *Wayne Oakland Bank*, 252 F.2d 537, 540, cert. denied, 358 U.S. 830 (1958).

This competitive equality was achieved in the McFadden Act of 1927 [1] and the Banking Act of 1933.[2] Throughout

---

[1] In the McFadden Act, Congress amended the National Bank Act to authorize National banks to establish branches in the municipality wherein their main offices were located "if such establishments and operation are at the time expressly authorized to State banks by the law of the State in question . . ." 44 Stat. 1228, 12 U.S.C. 36(c). At the same time Congress restricted further branch expansion of State banks, which had elected to become members of the Federal Reserve System, by amending the Federal Reserve Act to prohibit new branches outside of the corporate limits of the municipality in which the main office was located. 44 Stat. 1229, 12 U.S.C. 321.

[2] In the Banking Act of 1933, National banks were permitted to establish branches outside the municipality in which the main office was located "if such establishment and operation are at the time authorized to State banks by the statute law of the State

the course of the debates on this legislation it was recognized that such competitive equality was imperative if the dual banking system was to survive. For example, in the debates on the McFadden Act of 1927, Representative McFadden, speaking on the floor of the House stated that ". . . this permission for National banks to meet the competition of State banks engaged in branch banking in certain large cities is absolutely vital to the maintenance of the National banking system." 65 Cong. Rec. 11298 (1924). Conversely, a proposal of the Senate Banking and Currency Committee in 1932 to allow National banks to establish branches irrespective of State law was vigorously opposed as resulting in the possible "elimination of the unit State bank", and destruction of the dual banking system.[1] The bill was passed only after the adoption of a floor amendment whereby National banks could establish branches only when authorized to State banks by the law of the State in question.[2]

The "new" bank approach of this case. The facts set forth in the Statement in the Petition (pp. 4-9) show that

---

in question by language specifically granting such authority affirmatively and not merely by implication or recognition, and subject to the restrictions as to location imposed by the law of the State on State banks . . ." 48 Stat. 189, 190, 12 U.S.C. 36. At the same time the restriction was removed on branches of States banks which were members of the Federal Reserve System, previously imposed by the McFadden Act of 1927. 48 Stat. 164, 12 U.S.C. 321.

[1] S. Rep. No. 584, 72nd Cong., 1st Sess. (1932); See, also, floor debates at 75 Cong. Rec. pp. 9890, 13002 (1932); 76 Cong. Rec. pp. 1449, 1997, 2079, 2080, 2090, 2205, 2206 (1932).

[2] 76 Cong. Rec. 1997, 2205, 2208, 2517 (1932). This amendment was never finally enacted into law because the bill itself did not pass the House prior to the expiration of the 72nd Cong. It was, however, included in a bill substituted for H. R. 5661 by the Senate Banking and Currency Committee, S. Rep. No. 77, 73rd Cong., 1st Sess. on S. 1631, p. 11 (1933), which did pass the following year, with the language on this matter emerging from the Conference Report. H. Rep. No. 254, 73rd Cong., 1st Sess., p. 29 (1933).

the directors of the Haddonfield National Bank, aware that a branch could not be established in Delaware Township, New Jersey, filed an application to form a new bank in Delaware Township, originally to be called the "Haddonfield Suburban National Bank of Delaware Township." An opportunity was afforded all Haddonfield stockholders to subscribe to the stock of the new bank and in the offering letter to the stockholders, its President announced with commendable candor that the new bank will be "an affiliate of the Haddonfield National Bank and that its affairs will be conducted by the same management and under the same policies as the Haddonfield National Bank." (R. 13a)

These facts, taken together with other circumstances of the case, led the State of New Jersey to report to the courts below that if an application for a new State banking charter were made under the same circumstances, it would be regarded in its substantive character as a branch application and rejected under the New Jersey statute governing branch applications. (See Affidavit of Charles R. Howell, Commissioner of Banking and Insurance of New Jersey, reflecting the advice of the Attorney General of New Jersey, R. 19a, and see dissent of Judge Bastian in the court below, Pet. p. 9a, quoting from the *amicus* brief filed by the State of New Jersey.)[1]

Importance of question presented. This case raises the question of whether the Congressional policy of competitive equality between National and State banks in branching precludes the Comptroller from approving an application by the directors of an existing National bank for a

[1] The branch banking laws of New Jersey so construed are contained in the Banking Act of 1948 of the State of New Jersey (N.J.S.A. 17: 9A-19). This statute provides that a State bank may establish a branch in any municipality in the same county where it maintains its principal office only if there is no banking institution which has a principal office or branch office located there.

new National bank charter under circumstances where, were it an application for a new State bank charter, it would be rejected as a forbidden branch facility under State law. If the Comptroller has the statutory authority to approve such an application, as the Majority below has held, National banks have a strong competitive advantage over State banks in all States where branch banking is prohibited or limited and where, under State law, such an application for a new bank would be considered a prohibited branch facility. In the Supervisors' opinion, such an approach patently evades the clear and unequivocal legislative purpose in the National Bank Act that the Comptroller follow State branch bank laws in order to preserve a competitive equality between National and State banks, and seriously threatens the competitive balance required for a continued functioning of the dual banking system.

2. The decision below is clearly erroneous.

The challenge to the Comptroller's authority in this case is *not* to an exercise of his discretion, e.g., whether a particular area is in need of an additional banking facility, but to his statutory authority to authorize the Respondent bank. The question is thus whether the Comptroller's statutory authority to charter a new bank under the provisions of the National Bank Act, 12 U.S.C. 27, is limited by Congressional policy underlying the branch provisions of the same Act, 12 U.S.C. 36(c), which establishes State law as the standard for National bank branches, and, if so, whether the Comptroller is accordingly without statutory authority to charter a new bank which a State has declared would constitute a forbidden branch under its law.

The Majority below answered this question by holding that the branch bank provisions of 12 U.S.C. 36(c) simply have no applicability to this case because the Respondent

bank was chartered as a new unit bank, with all of the attributes which distinguish a unit bank from a branch. This conclusion reflects an erroneous premise that the Comptroller's authority in the National Bank Act to charter new banks, 12 U.S.C. 27, is completely independent of the branch banking provisions in the same Act, 12 U.S.C. 36. It is axiomatic that a statute must be construed in a manner so as to produce a harmonious whole. *Western P.R. Corp.* v. *Western P.R. Co.*, 345 U.S. 247, 257 (1953); *Federal Power Commission* v. *Panhandle E.P.L. Co.*, 337 U.S. 498, 514 (1949); *Clark* v. *Hebersee Finanz-Korp.* 332 U.S. 480, 488 (1947). It is inconceivable to think that Congress, when it limited branch powers of National banks to those authorized State banks under State branch banking law in order to establish competitive equality in State and National bank branches, contemplated that the Comptroller could, at the same time, charter a new bank under circumstances specifically declared by a State to be a prohibited branch under its branch banking law. Such a result runs counter to the whole legislative scheme established by Congress to maintain competitive equality in branching which it achieved by the adoption of State law as the standard for National bank branches.

The Majority below also relied upon the fact that there is no prohibition against "affiliates" in the National Bank Act by which, it is presumed, the Court meant there is no prohibition against "chain banking" where one or more stockholders in one unit bank own stock in other unit banks, as in the instant case. The Supervisors agree. There is no blanket prohibition against chain banking in the National Bank Act, just as there is no such blanket prohibition in New Jersey's statutes, nor in those of any other State except Mississippi, Miss. Code, 1942 Anno. Vol. 4A § 5235. Chain banking, however, just as any otherwise legitimate form, may be unlawful when it is made the implement for avoiding a clear legislative

purpose.[1] Each State must decide, on the basis of its own branch banking laws, the circumstances under which a chain bank would contravene those laws, and the views of the various States may differ, which is to be expected because of the wide variety of legislative purposes expressed in the varying State branch banking laws.[2] Once a State has declared itself, however, as New Jersey has done in the instant case on the advice of its Attorney General, and has held that a particular chain bank approach violates the State branching law, the Comptroller is bound to follow that construction. This is so not because of State law *per se*, but because *Congress* has decided that the Comptroller should be bound by State law in the matter of branching in order to establish competitive equality between State and National banks. Under such a strong and unequivocal legislative mandate in the National Bank Act, the Comptroller simply lacks any statutory authority to go ahead and charter a new chain bank when a State has specifically declared that such a new chain bank, were it a State bank, would constitute a forbidden branch under State law.

---

[1] E.g., the corporate form may always be disregarded whenever necessary to prevent evasion of the clear purpose of a statute. *Sekenley Distillers Corp.* v. *United States*, 326 U.S. 432, 437 (1946); *Chicago, M. & St. R. Co.* v. *Minneapolis C. & C. Assoc.*, 247 U.S. 490, 501 (1918); and cases cited in Fletcher *Cyclopedia Corps.*, Vol. 1, para. 45.

[2] See Appendix A. Compare for example, the position taken by the Supervisor of Banking in this case on the advice of the Attorney General of New Jersey (p. 6, *supra*), with *Daniel* v. *Best*, 224 Iowa, 1348, 279 N.W. 374 (Sup. Ct. Iowa, (1938)); also see the opinion of the Attorney General of Illinois, which is substantially in accord with the position taken by the State of New Jersey here and is set forth in full in Hearings before the Committee on Banking and Currency, House of Representatives, 84th Cong., 1st Sess., on H.R. 2674 (1955), at pp. 195-200.

CONCLUSION

For the reasons set forth above, the National Association of Supervisors of State Banks respectfully requests this Court to grant the Petition for a Writ of Certiorari, as requested by the Camden Trust Company, Petitioner in this cause.

Respectfully submitted,

JAMES F. BELL
1001 Connecticut Avenue, N.W.
Washington 6, D. C.
Attorney for Amicus Curiae

Of Counsel:
POGUE & NEAL
1001 Connecticut Avenue, N.W.
Washington 6, D. C.

April 12, 1962

APPENDIX A

Summary Of Branch Banking Statutes Of The 50 States, Puerto Rico, and Virgin Islands

States Permitting Statewide Branch Banking

State	*Citation*
Alaska	Sess. Laws of Alaska, Section 3.208
Arizona	Arizona Revised Stat. Anno., Section 6-223
California	Calif. Financial Code Anno., Section 500
Connecticut	Gen. Stat. of Conn., Revision of 1958, Section 36-59
Delaware	2 Del. Code Anno., Title 5, Section 770
Hawaii	Revised Laws of Hawaii, Section 178-39
Idaho	Idaho Code, Section 26-1001
Louisiana	La. Revised Stat., Title 6, Section 54
Maryland	Anno. Code of Md. 1957, Art. 11, Section 65
Nevada	Nevada Revised Stat. Title 55, Ch. 660, Section 660.010
North Carolina	Gen. Stat. of N. C., Section 53-62
Oregon	Oregon Rev. Stat., Section 714.020.
Rhode Island	Gen. Laws of R. I., Section 19-1-13
South Carolina	Code of Laws of S. C., Section 8-57
South Dakota	S. D. Code of 1939, Section 6.0402
Utah	Utah Code Anno., Section 7-3-6
Vermont	Vermont Stat. Anno., Title 8, Section 501
Washington	Revised Code of Wash., Section 30.40.020
Puerto Rico	Laws of P. R. Anno., Title 7, Section 111 (i)

States Permitting Branch Banking Within Limited Areas

Alabama	Acts of 1953, 1955, 1957; Code of Alabama, Section 125 (1)
Georgia	Code of Ga. Anno., Section 13-203.1
Indiana	5 Burns Ind. Stat. Anno., Section 18-1707
Kentucky	Ky. Revised Stat., Section 287.180
Maine	Revised Stat. of Maine, Ch. 59, Section 19-C (1961 Supp.); Ch. 59, Section 124 (1961 Supp.)
Massachusetts	Mass. Gen. Laws Anno., Ch. 172, Section 11 (1961 Supp.) Ch. 172 A, Section 12
Michigan	Mich. Stat. Anno., Sections 23.762, 23.762 (1)
Mississippi	Miss. Code, Sections 5228, 5229
New Jersey	N. J. Stat. Anno., Section 17:9A-19
New Mexico	N. M. Stat. Anno., Section 48-2-17
New York	Book 4, Banking Law, Section 105

State	Citation
Ohio	Page's Ohio Revised Code Anno., Section 1103.09
Pennsylvania	Purdon's Pa. Stat. Anno., Title 7, Section 819-204.1
Tennessee	Tenn. Code Anno., Section 45-211
Virginia	Code of Va., Art. 3, Section 6-26

States Prohibiting Branch Banking

Arkansas*	Ark. Stat. 1947 Anno., Section 67-319
Colorado	Colo. Revised Stat., Section 14-13-1
Florida	Fla. Stat. Anno., Section 659.06
Illinois	Smith-Hurd Ill. Anno. Stats., Ch. 16-½, Section 106
Iowa*	Ia. Code Anno., Section 528.51
Kansas*	Gen. Stat. of Kansas Anno., Section 9-111 (1959 Supp.)
Minnesota	Minn. Stat. Anno., Section 48.34
Missouri*	Vernon's Anno., Mo. Stat., Section 362.105
Montana	Revised Codes of Mont. Anno., Section 5-1028
Nebraska*	Revised Stat. of Neb., Section 8-1,105
North Dakota*	N. D. Revised Code, Section 6-03-14
Oklahoma*	Okla. Stat. Anno., Title 6, Ch. 19, Section 461
Texas	Vernon's Civil Stat. of Texas Anno., Art. 342-903
West Virginia	W. Va. Code Anno., Section 3131
Wisconsin*	West's Wisc. Stat. Anno., Section 221.04

States With No Legislation Authorizing Branch Banking

New Hampshire
Wyoming
Virgin Islands

* These states permit certain offices with limited powers only.